Company will have a tendency to bring about this result by its condemnation of a practice which has become prevalent in certain localities.

FUGITIVE FROM JUSTICE.

The decision of the Supreme Court of the United States in the recent case of *Appleyard v. Massachusetts*, handed down December 3, 1906, is of interest not because the result reached was novel or unexpected but for reason of the fact that it is a final and complete adjudication of a matter on which the position assumed, while supported by the decided weight of authority, was yet the subject of some contrariety of opinion. It embodies a construction of the term "fugitive from justice," as found in the act of Congress respecting interstate extradition, and sanctions the proposition that the *actual intent* of the alleged offender, in leaving the jurisdiction where the crime was committed, is not material to a determination of his *status*.

The case of *Pettibone v. Nichols*, was passed upon immediately preceding by the same court. (See Comment XVI, YALE LAW JOURNAL 347). While cognate to the present case in many particulars, the principle announced is distinctively different; it there being held that a circuit court of the United States, when asked upon *habeas corpus*, to discharge a person held in actual custody by a state for trial in one of its courts under an indictment charging an offense against its its laws, cannot properly take into consideration the methods whereby that custody was obtained.

The decision in *Appleyard v. Massachusetts* is a confirmation of the *dictum* in *Roberts v. Reilly*, where it was said, "To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having committed within a state that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another." 116 U. S. 80. This *obiter dictum* had been followed by several decisions in state courts. *State v. Richter*, 37 Minn. 438; *Hibler v. State*, 43 Tex. 197, 201; and others cited in principal cases. In the Minnesota case the statement is made, "the important thing is not their purpose in leaving, but the fact that they had left, and hence were beyond the reach of the process of the state where the crime was committed," and again, "the simple fact that they are not within the state to answer its criminal process, when required, renders them, in legal intendment, fugitives from justice, regardless of their purpose in leaving." These cases represent the weight of authority, both logically and numerically.

As opposed to the prevailing view may be cited *Degant v. Michael*, 2 Ind. 396 and *United States v. O'Brian*, 3 Dillon 381. In the latter there was under consideration a state statute to

the effect that no indictment should be found unless within two years from the commission of the alleged offense, followed by a proviso that the bar or limitation should not extend to one fleeing from justice. The Court says, "it is necessary..... to determine the motives of the defendant in leaving the state" and further on, (referring to fleeing from justice), "it means to leave one's home, or residence, or known place of abode, with intent to avoid detection or punishment for some public offense against the United States." In Massachusetts also there seemed at one time a tendency to so construe the phrase as to require a consciousness of guilt in certain classes of cases. *OP. Atty. Gen. in Vinal case.* (1890.) In *ex parte Tod*, 12 S. D. 386, an unusual state of facts existed and a peculiar modification was imposed on the general rule. There the petitioner in *habeas corpus* had defrauded his employers. Subsequently he departed from the state at the request and direction of his employers and on their business. When sought to be extradited, it was held that he was not a fugitive from justice, and the following is quoted from the decision: "While it may not be necessary, to make a person a fugitive from justice, that he should leave the state where the offense is alleged to have been committed, with the intention, or for the purpose of, avoiding a prosecution, still we think it must appear that he left the state without the knowledge or consent, actual or implied, of the parties alleged to have been defrauded."

It is almost universally conceded that the party sought to be extradited must have been actually, physically present in the demanding state at the time of the occurrence of the alleged offense. A constructive presence will not be sufficient. It would indeed be a distortion of language not to be countenanced, to say that a person who had never set foot in a state, had fled from it. Accordingly, it was held that where a dealer in horses, residing in Chicago, had through the mails, effected a sale to a resident of Tennessee by means of false pretences, he could not be extradited from Illinois, never having been corporeally present in Tennessee. *Tennessee v. Jackson*, 36 Fed. 258. So also where the alleged criminal is only constructively present in a state at the time of the commission of a crime, he cannot be considered a fugitive from justice, although it be, that subsequent to said time, he has actually been in the state in which the crime was committed and which is now seeking his extradition. *People v. Hyatt*, 172 N. Y. 176.

The doctrine enunciated by the Supreme Court must appeal to every one as a most sound one. If the *animus* of the individual was the controlling factor, if his secret thoughts and motives had to be inquired into to ascertain whether or no he was a fugitive, it would to all intents and purposes emasculate the act of Congress on the subject. The subjective test must be repudiated as too vague, shadowy and uncertain for practical purposes. While the opinion does not expressly mention these objections, yet it is to be plainly inferred from the whole current of authority on the subject, that the matter was considered by the court in arriving at its conclusion.